

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 2008 of 1987

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

WORKMAN EMPLOYED UNDER A M C

Appearance:

Ms.Kerawala, Advocate, with MR BP TANNA,
for Petitioner
MR KM PARIKH for the Respondent.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 25/02/2000

ORAL JUDGEMENT

This is a Special Civil Application, invoking the powers of this Court, under Article 227 of the Constitution of India by the Ahmedabad Municipal Corporation against the Award dated 29th October, 1986, passed by the Industrial Tribunal on a Reference under Section 10 of the Industrial Disputes Act. Facts, in brief, are that the workman, viz., Vasantbhai N. Dave, Senior Clerk in the Estate Department, was suspended during the period from 7.12.1979 to 31.10.1980 and his two increments were stopped without any future effect. The misconduct alleged and found against him was that he

entered, in the electoral roll, names of certain persons, who were residing outside the Municipal limits. After completion of enquiry, punishment of stopping his two increments without future effect was imposed on the workman and suspension period was ordered to be treated as on leave.

The workman raised an industrial dispute against the imposition of punishment on him. The learned Presiding Officer of the Industrial Tribunal upheld the disciplinary action of the Corporation, but interfered in the quantum of punishment. According to the Presiding Officer of the Tribunal, the workman had admitted his mistake, but it was stated that it was bona fide. He had health problems and he was taking treatment for the eyes. On the above facts, the Tribunal held that stoppage of two increments was rather a harsh punishment. The Tribunal reduced it to stoppage of one increment. So far as the direction by the Corporation to treat the period of suspension as to be on leave, the Tribunal made a reference to the existing policy of the Corporation, which laid down that an enquiry should, as far as possible, be completed within three months. According to the Tribunal, the disciplinary enquiry continued for 10 months and 24 days and it would be inequitable to treat the entire period of enquiry as on suspension. The Tribunal interfered with that part of the order of the Corporation and held that only a period of three months should be treated as the suspension period and for the remaining period, the leave due, if any, should be adjusted and, thereafter, the remaining period should be treated as on duty and he should be given full pay and allowances as admissible.

The learned counsel appearing for the Corporation contends that there was no justification for the Tribunal to interfere in the quantum of punishment. It is contended that the Circular, laying down three months' period for completion of enquiry is merely of a recommendatory nature and there were circumstances on record to justify prolongation of enquiry for 10 months and 24 days. It is also submitted that the order passed by the Tribunal in the present case may be cited as a precedent in future cases, and in other cases, that wherever enquiry is prolonged beyond three months, maybe at the instance of the workman or employee, there would be justification for the Tribunal to interfere in favour of the workman.

After hearing the learned counsel, this Court finds no scope for interference by this Court in exercise

of its extraordinary powers under Article 227 of the Constitution of India. It is not disputed that the Tribunal has powers under Section 11A of the Industrial Disputes Act to interfere even in the quantum of punishment. In this particular case, the Tribunal felt that the workman having admitted his mistake to be a bona fide one and because of his health problems, stopping of two increments was somewhat a harsh punishment. It is possible to take a different view, but for that reason alone, it would not be appropriate for this Court to interfere in due exercise of power by the Tribunal.

So far as treating the period of suspension as on leave for 10 months and 24 days is concerned, the Tribunal has made reference to the existing Circular and policy of the Corporation to fix three months' period for completing the enquiry. There is justification on behalf of the Corporation to state that the Circular, fixing three months' period for completion of enquiry, is recommendatory and directory and it cannot be read as mandatory. Situations can be conceived, resulting in prolongation of enquiries because of the faults or defaults solely on the part of the workman and in that situation, three months' period laid down cannot be adhered to. It would, however, depend upon the facts of each case. There is nothing on record in this particular case to show that there was any justification for the Corporation not to complete the enquiry within a reasonable period of three months. In view of the peculiar facts of this case, the interference of the Tribunal in the quantum of punishment cannot be held to be unjustified. The Tribunal had exercised discretion to hold that the workman should not be deprived of salary for the entire period of suspension of 10 months and 24 days. The Tribunal has not committed any error of jurisdiction or law. Consequently, the petition fails and it is hereby dismissed, but, in the circumstances, without any order as to costs. Rule is discharged. The order granting interim relief is vacated.

(D.M. Dharmadhikari, C.J.)

(apj)